

February 23, 2009



**U.S. Army Corps
Of Engineers**
Norfolk District

PUBLIC NOTICE
PUBLIC MEETING ANNOUNCEMENT

On June 16, 2006 the Norfolk District Commander issued a Local Order, authorizing a Restricted Area in waters adjacent to the Back Bay National Wildlife Refuge. The intent of this regulation is to encourage maximum use of public resources by controlling the distance and manner in which all vessels, regardless of make or model, may operate in and around the Refuge. The regulation provides a significant measure of protection to the Refuge and its resources, provides a common operating standard for all vessel traffic near the shoreline, addresses well recognized safety issues associated with multiple types of vessels operating in close proximity to each other and retains generally recognized uses of open waters. During our preliminary review, it became apparent that the majority of waterway users are already operating within the scope of this regulation. This regulation is aimed at those users who do not understand how their actions on the waterway adversely affect the environment, property owners, and other waterway users.

All concerned parties should note that this regulation can be suspended or further expanded to encompass all areas within Back Bay. Public input will be a vital component of the decision-making process associated with this and future actions.

33 U.S.C. 1 states in part: "It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his/her judgment the public necessity may require for the protection of life and property."

The initial regulation became effective on June 16, 2006 and was modified on May 16, 2008 (citation below). The Norfolk District is soliciting public comments regarding future regulations as follows:

1. Limit the restricted area to the primary boating season which runs from Memorial Day to Labor Day.
2. Expand the regulations to include all federal property within Back Bay and North Bay and possibly False Cape State Park.
3. Restrict high speed access North and South to the Great Narrows Channel only.
4. Eliminate the regulation entirely.

A public meeting will be held on:

MEETING DATE:

LOCATION:

TIME:

March 23, 2009

Princess Anne Recreation Center
1400 Nimmo Parkway
Virginia Beach, Virginia 23456
Rooms 3, 4 and 5

7 pm - 9 pm

WATERWAY AND LOCATION OF THE PROPOSAL

The order is valid only in navigable waters of the United States adjacent to the shoreline designated as Back Bay National Wildlife Refuge located within Commonwealth of Virginia in which the Norfolk District has jurisdiction.

CENAO-TS-REG

May 16, 2008

MEMORANDUM FOR: U.S. COAST GUARD CAPTAIN OF THE PORT, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE VIRGINIA MARINE RESOURCE COMMISSION, LAW ENFORCEMENT DIVISION, VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES AND CONCERNED PARTIES.

SUBJECT: Designation of a Restricted Area in Back Bay, a navigable water of the United States, adjacent to lands within the Back Bay National Wildlife Refuge property boundary located in Virginia Beach, Virginia.

EFFECTIVE DATE: This regulation is effective immediately.

This regulation, promulgated by the Corps of Engineers, Norfolk District prohibits certain activities from being conducted within the Restricted Area as defined below.

NORFOLK DISTRICT CORPS OF ENGINEERS LOCAL ORDER FOR WATERS ADJACENT TO THE BACK BAY NATIONAL WILDLIFE REFUGE

Pursuant to the authority granted in 33 C.F.R. 209.200, 334.3(c), and 33 U.S.C. 1, the Norfolk District has established a Restricted Area in waters of the United States adjacent to the Back Bay National Wildlife Refuge, Virginia Beach, Virginia as follows:

Virginia Beach, Virginia, Back Bay National Wildlife Refuge, Restricted Area.

(a) Area: The waters extending 100 yards from Ordinary High Water along the entire shore line of the Back Bay National Wildlife Refuge located within the Proclamation Boundary established in 1939.

(b) Regulations: No vessel of any type shall operate at a speed that causes a wake while they are within 100 yards of the shoreline of the Back Bay National Wildlife Refuge as defined above.

(c) Exceptions: (1) There are no speed or wake restrictions for vessels operating within the Great Narrows Channel or the East and West Channels while transiting to or from Shipps Bay and Redhead Bay. (2) No vessel or persons may enter the interior waters located within Ragged Island.

(d) Enforcement: The regulation in this section, established by the United States Army Corps of Engineers may be enforced by any Federal Agency, State, Local or County Law Enforcement agency, or Private Security Firms in the employment of the United States Army Corps of Engineers or U.S. Fish and Wildlife Service so long as the entity undertaking enforcement action has the legal authority to do so under the appropriate Federal, State, or Local laws.

(e) Effective Date: This order is effective immediately.

(f) Duration: The proposed order shall remain in effect indefinitely. Prior to full implementation, public notices and hearings will be conducted by the Corps of Engineers to determine if this is in fact the proper course of action.

(g) Penalty: Every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding six months, in the discretion of the court.

(h) Contact Information: For the latest information regarding the Restricted Area or for permission to enter the area contact Mr. Rick Henderson, Norfolk District Corps of Engineers Regulatory Branch at (757) 201-7653, e-mail Richard.E.Henderson@nao02.usace.army.mil or check the web site at <http://www.nao.usace.army.mil/Regulatory/PN/PN.html>.

APPLICATION EVALUATION

The decision to continue authorizing temporary restricted areas is based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision reflects the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected from the proposal, must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to modify condition or withdraw this authorization. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Engineer within 15 days of the date of this notice, stating specific reasons for holding the public hearing. The District Engineer will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) no known properties eligible for

inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. Additional information might change any of these findings.

Any person may request a public hearing to present views, opinions and information on this Order. The request must be submitted in writing to the District Commander within 15 days of the date of the notice and state specific reasons for holding the public hearing. A public hearing will be granted unless the District Commander determines, in writing, that there are no substantial issues to be addressed in the public hearing or that no valid interest will be served by the hearing.

COMMENT PERIOD

Replies to this notice should be made in writing, addressed to the Norfolk District, Corps of Engineers (Attn; CENAO-REG), 803 Front Street, Norfolk, Virginia 23510-1096, e-mail Richard.E.Henderson@nao02.usace.army.mil and should reach this office not later than the close of business on April 7, 2009. Should you have any questions about the contents of this advertisement, please call Mr. Rick Henderson at telephone 757-201-7653.

FOR THE DISTRICT COMMANDER:



J. ROBERT HUME, IN
Chief, Regulatory Office